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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/806,658 | 03/23/2004 | Joshua M. Girvin | 3703.1000-001 | 1153 |

21005 7590 09/22/2006

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EXAMINER

LEE, BENJAMIN C

ART UNIT PAPER NUMBER

2612

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/806,658 | Applicant(s) GIRVIN ET AL. | |
| | Examiner Benjamin C. Lee | Art Unit 2612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/8/06 has been entered.

Claim Status

2. Claims 35-43 are pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 35-36 and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Mosher, Jr. et al. (US 2003/0173408).

1) Regarding claim 35:

Mosher, Jr. et al. discloses the claimed: device (Figs. 4, 9) comprising: a band (90) having at least one outer edge (top outer edge of band 90 in Fig. 4); a fastening (93-94, lines 7-8 of [0064] and lines 10-16 of [0050]) arranged to fasten said band around a body part of a user; an RFID circuit (92) disposed in the band, the RFID circuit comprising: an antenna (line 31 of

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[0064]) and a transponder chip (92 of Fig. 4 and lines 40-52 of [0052]); and at least one electrically conductive trace (96, 97 of Fig. 4; lines 19-36 of [0064] and Fig. 4) disposed in the band, wherein the combination of said trace and said antenna surround *at least a portion of* the fastening along a length of the wristband (in Fig. 4, 96, 97 surround a portion of 93, 94) such that a cut cannot be made between said at least one outer edge of the band and said portion of the fastening without also severing at least one of said antenna and said trace (a cut made between the top edge of band 90 and said at least a portion of the fastening 93, 94 when fastened in Fig. 4 would invariably sever the trace 96, 97).

2) Regarding claim 38, Mosher, Jr. et al. met all of the claimed subject matter as in claim 35, including:

--the claimed wherein the band further comprises identification information in printed form (end section of [0082]).

3) Regarding claim 39, Mosher, Jr. et al. met all of the claimed subject matter as in claim 35, including:

--the claimed wherein the band has one or more holes formed along a length thereof and the electrically conductive trace runs adjacent to the holes (95-97 in Fig. 4).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 36 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosher, Jr. et al. in view of Peterson et al. (US pat. #5,448,846).

1) Regarding claim 36, Mosher, Jr. et al. met all of the claimed subject matter as in claim 35, including:

a) the claimed wherein the fastening is comprised of a mating part, a mating hole, and at least one adjustment hole, such that the fastening may be secured by passing said mating part through said adjustment hole and locked into said mating hole (Fig. 4 and lines 10-16 of [0051]); except:

b) specifying the claimed said mating part is a barbed peg.

However, Peterson et al. teaches a wristband locking fastener using such known barbed peg (Figs. 1-6).

In view of the teachings of Mosher, Jr. et al. and Peterson et al., it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use a known barbed peg type fastener as taught by Peterson et al. as the fastener of choice in Mosher, Jr. et al. in order to provide a secured locking fastener as intended.

2) Regarding claims 40-41, Mosher, Jr. et al. and Peterson et al. render obvious all of the claimed subject matter as in the consideration of claims 35-36, including:

--the claimed wherein the combination of said electrically conductive trace and said antenna surround at least one of said adjustment holes (Fig. 4 in which the trace 96, 97 surrounds ALL of the adjustment holes 95 as a whole).

3) Regarding claim 42, Mosher, Jr. et al. and Peterson et al. render obvious all of the claimed subject matter as in claim 40, plus the consideration of claim 38.

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4) Regarding claim 43, Mosher, Jr. et al. and Peterson et al. render obvious all of the claimed subject matter as in claim 40, plus the consideration of claim 39.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 35-43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 7,042,357 in view of Mosher, Jr. et al.

Patented claims 1-13 met most of the claimed subject matter, including the claimed features of claim 37 (conductive loop encircles each of the holes and/or barbed peg: see e.g. patented claim 3 which depends on patented claim 2), and remaining subject matter not met are obvious further in view of Mosher, Jr. et al. as indicated in the above rejection, for similar/analogous motivations for combining/modifying.

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9. Claims 35-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-40 of copending Application No.

11/070,072 in view of Mosher, Jr. et al.

Co-pending claims 1-40 met most of the claimed subject matter, including the claimed features of claim 37 (conductive loop encircles each of the holes and/or barbed peg: see e.g. co-pending claims 7 and 10), and remaining subject matter not met are obvious further in view of Mosher, Jr. et al as indicated in the above rejection, for similar/analogous motivations for combining/modifying.

This is a provisional obviousness-type double patenting rejection.

10. Claims 35-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No.

11/070,125 in view of Mosher, Jr. et al.

Co-pending claims 1-19 met most of the claimed subject matter, including the claimed features of claim 37 (conductive loop encircles each of the holes and/or barbed peg: see e.g. co-pending claims 9-14), and remaining subject matter not met are obvious further in view of Mosher, Jr. et al. as indicated in the above rejection, for similar/analogous motivations for combining/modifying.

This is a provisional obviousness-type double patenting rejection.

11. Claims 35-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No.

11/397,410 in view of Mosher, Jr. et al.

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Co-pending claims 1-37 met most of the claimed subject matter, including the claimed features of claim 37 (conductive loop encircles each of the holes and/or barbed peg: see e.g. co-pending claim 19), and remaining subject matter not met are obvious further in view of Mosher, Jr. et al. as indicated in the above rejection, for similar/analogous motivations for combining/modifying.

This is a provisional obviousness-type double patenting rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US patent 6806812

--Similar RFID device with antenna extensions (Figs. 2-3).

US patent 5646592

--Similar RFID device with tampering detecting loop (Figs. 6-8).

US patent 6,104,311

--Similar identification band with barbed peg fastener.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin C. Lee whose telephone number is (571) 272-2963.

The examiner can normally be reached on Mon -Thu 9:00Am-5:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Benjamin C. Lee
Primary Examiner
Art Unit 2612

B.L.